



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

ROGER BERLINER  
COUNCILMEMBER  
DISTRICT 1

To: Marc Hansen  
County Attorney

From: Council Vice President Roger Berliner, Council President Valerie Ervin  
Councilmember Phil Andrews, Councilmember George Leventhal  
Councilmember Nancy Floreen, Councilmember Marc Elrich  
Councilmember Nancy Navarro, Councilmember Hans Riemer

Re: Public Power Legal & Statutory Issues

Date: February 14, 2011

As you know, our Council last week heard testimony from a senior executive of the American Public Power Association (APPA) in which she described the benefits of public power.

The benefits of public power include local control; a focus on reliability of service; availability of lower cost capital; the ability to allocate more financial resources to upgrading the system since neither dividends to shareholders nor high corporate salaries are a part of public power; and a focus on serving people with no competing broader corporate interests coming into play.

We believe that it is incumbent upon our County to explore this option prudently and carefully as other communities across the country have done. Our residents have endured the total failure of both Pepco and the regulatory system that is supposed to protect us for far too long. The cost to our county of this twin failure has yet to be fully quantified – but its cost to our public health, safety, economy, competitiveness and general well being is almost incalculable.

Accordingly, as a preliminary step, we would request that your office advise us on certain threshold statutory, regulatory, and legal issues:

- What changes, if any, would be required in state law to allow for our residents to be served by public power;
- What is the role of the Maryland Public Service Commission, if any, in reviewing or approving the transfer of Pepco's franchise to a public power entity; and

- What are the principal legal issues that arise when pursuing public power in the context of taking service over from an incumbent investor-owned utility.
- If an eminent domain action were to be required to assume control of the electric distribution system, how would Montgomery County go about determining the value of the assets?

The APPA has offered its continuing advice and assistance and we will be in contact with it as well. As we better understand the costs involved in acquiring and operating the system, we expect to work with our Department of Finance to identify financing and revenue options. It may be necessary to pursue a “feasibility study” with in-house expertise or outside consultants. For now, we seek your assistance in identifying answers to these threshold questions and we thank you in advance for your assistance in this important matter

Cc: County Executive Ike Leggett  
Tim Firestine  
Jennifer Barrett